

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

**UNIVERSITY OF DETROIT MERCY**

**Employer**

**and**

**MICHIGAN EDUCATION ASSOCIATION**

**Case 7-UC-616**

**Petitioner**

**APPEARANCES:**

Craig S. Schwartz, Attorney, of Detroit, Michigan, for the Employer.  
Michael K. Lee, Attorney, of Southfield, Michigan, for the Petitioner.

**DECISION AND ORDER**

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding<sup>1</sup>, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The Petitioner (also referred to as MEA), a labor organization, claims to represent certain employees of the Employer.

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<sup>1</sup> The Employer timely filed a brief, which I carefully considered. The Petitioner's brief is dated June 30, 2008, the date it was due. It was received on July 2. Petitioner's brief was untimely, is not part of the record, and was not considered.

## Overview

The Petitioner seeks to clarify full-time buyers<sup>2</sup> into its existing unit of all regular full-time office clerical employees at the Employer's McNichols Road campus in Detroit. The Petitioner argues that the buyer position is a successor to the bargaining unit position of accounts payable (a/p) clerk which was eliminated from the bargaining unit about November 1, 2007. The Petitioner argues that the buyers perform essentially the same duties as the eliminated a/p clerks and, moreover, that the buyers share a sufficient community of interest with the bargaining unit office clerical employees so that inclusion in the existing unit is appropriate. The office clerical bargaining unit consists of approximately 47 employees. The Employer currently employs two individuals as buyers: Edna Matthews and Keith Williams.

As a threshold matter, the Employer asserts that the Board does not have jurisdiction over it as a religious institution under *NLRB v. University of Great Falls*, 278 F.3d 1335 (D.C. Circ. 2002). Alternatively, the Employer asserts several arguments against clarification: (1) the petition is untimely in that the buyer position has been historically excluded from the bargaining unit since at least 1999, there have been successive collective bargaining agreements negotiated since then and the Petitioner has not sought to represent them, and there have been no significant changes to the position to warrant inclusion via the instant clarification petition; (2) the buyers are managerial employees and thus excluded from protection under the Act; and (3) the buyers do not share a sufficient community of interest with the office clerical unit employees.<sup>3</sup>

For the reasons set forth below, I find that the Employer is not exempt under Section 2(2) of the Act as a religious institution under the test enunciated by the Supreme court in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), and extant Board law. Further, the employees involved herein are not teachers, are not engaged in work promoting the tenets of the Catholic church and thus assertion of jurisdiction over the Employer will not create significant entanglement as that envisioned in *Catholic Bishop*. I conclude that clarification of the existing office clerical unit to include buyers is inappropriate because the petition is untimely. I further conclude that even if the petition was timely, the buyers are managerial employees and, in any event, lack an overwhelming community of interest with unit employees.

## The Employer's Operations and Management Hierarchy

The Employer is a nonprofit private Roman Catholic university located in Detroit which is affiliated with and sponsored by two religious orders, the Society of Jesus, also

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<sup>2</sup>The buyer classification is specifically referred to as "purchasing services buyer," however, the employees in this classification are commonly referred to as buyers, and are referred to as buyers herein.

<sup>3</sup> In making these arguments, the Employer does not waive its challenge to the Board's jurisdiction in the matter.

known as the Jesuits, and the Religious Sisters of Mercy.<sup>4</sup> It is a class two masters Carnegie classification university which provides a traditional undergraduate program in addition to a significant number of graduate programs, including a law school and a dentistry school. There are approximately 6,000 students in attendance at the McNichols Road campus. The Employer accepts federal funds and is not financially dependent on the Catholic Church or either of its sponsoring religious orders. Only one-third of its board of trustees is required to be associated with either the Jesuits or the Religious Sisters of Mercy<sup>5</sup>. The Employer's mission statement provides that the Employer is "a Catholic university in the Jesuit and Mercy traditions...that exists to provide excellent student-centered undergraduate and graduate education in an urban context [and]...seeks to integrate the intellectual, spiritual, ethical and social development of [its] students." Only about ten percent of university faculty (approximately 20 of 220 faculty members) and three administrators are associated with either the Jesuits or the Religious Sisters of Mercy. The faculty is not required to be associated with any religion, is not evaluated regarding religious persuasion, and is not required to teach or support the Catholic doctrine. The unit employees are not required to be associated with Catholicism or take part in any religious activities.

The general university curriculum does not emphasize or require an emphasis on Catholicism and requires only that each student take one or two classes in religious studies during their tenure, without any requirement that those courses be directly related to Catholicism. Additionally, while one-third to one-half of the student population is of the Catholic faith, there is no requirement that students be affiliated with any religion for purposes of admission. Although the university observes and celebrates certain Catholic spiritual traditions, observance and/or attendance is not compulsory for any university staff or students.

Father Stochausen has been the president of the university since 2005. Steven Nelson is the associate vice president for human resources. Netina Anding is the assistant director for human resources. Anding oversees issues arising within the human resources department related to labor relations, collective bargaining negotiations, employee relations, staffing, and recruiting. Tina Maitland is the purchasing manager. Maitland oversees and manages the purchasing department. She supervises the buyers as well as one part-time accounts payable employee, whom the parties agree is not in the unit by virtue of her part-time status. Maitland does not supervise any unit employees. Maitland reports to James Priskey, associate vice president and controller, who reports to the vice president of finance.

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<sup>4</sup> The Employer is a result of the merger of two separate universities, the University of Detroit and Mercy College of Detroit, in 1990. The University of Detroit was associated with the Jesuits and Mercy College of Detroit was associated with the Religious Sisters of Mercy.

<sup>5</sup> The record indicates that there are currently 12 members of the board of trustees who are associated with the Jesuits or the Religious Sisters of Mercy. However, the record is unclear as to the total number of current board of trustees members. The Employer's bylaws indicate that its board of trustees shall consist of not more than 36 members, as determined from time to time by the board of trustees.

It appears that the unit office clerical employees each report to their respective department head<sup>6</sup>. The record is unclear as to whom the department heads report. However, as to the student accounting office, the record demonstrates that an office assistant (a bargaining unit employee) in that department reports to Fara Smith, assistant director of the student accounting office, who reports to Cheryl Stycynski, director of the student accounting office, who reports to associate vice president/controller Priskey.

## **Bargaining History**

The office clerical unit was certified by the Board on July 6, 1990 in Case 7-RC-19266. The parties have negotiated a series of collective bargaining agreements since 1990, with the present agreement being effective from January 1, 2006 to December 31, 2008. The 1990 Certification of Representative as well as the present agreement's recognition clause describes the unit as all full-time office and clerical employees employed at the McNichols Road campus; but excluding parking attendants, building monitors, equipment managers, faculty, student employees, employees represented by another labor organization, confidential employees, guards, and supervisors as defined in the Act. There were two full-time a/p clerks in the unit until about November 1, 2007, when their positions were eliminated by the Employer.<sup>7</sup> There have been three buyers employed by the Employer since the unit was certified in 1990. Gaylene Vivier was promoted from within to the position of buyer<sup>8</sup> in June 1999 and held the buyer position until she resigned in March 2003. The buyer position was vacant from March 2003 to January 2005<sup>9</sup>, when Edna Matthews was hired as a buyer. Keith Williams was hired as a buyer in September 2007. The buyers never have been included in the unit and the Petitioner has not attempted to include them until the filing of the instant clarification petition.

## **Unit Office Clerical Duties**

There are approximately 47 office clerical employees employed in approximately 21 university departments, including the departments of international services; admissions; men's basketball; women's basketball; marketing and public affairs; student life; student accounting office; career education center; financial aid; library; engineering and science; architecture; registrar; business administration; mail and receiving; liberal arts and education; athletics administration; public safety; theatre; residence life; and university advancements. There are approximately two or three office clerical employees employed in each department. The office clerical classifications include office assistant; administrative assistant; secretary; customer service representative; data operations

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<sup>6</sup> The department head may be a dean of an educational department, or a supervisor or director of the specific department.

<sup>7</sup> The Petitioner did not file a grievance regarding the elimination of the a/p clerk position.

<sup>8</sup> The record is unclear regarding from which position Vivier was promoted.

<sup>9</sup> The record does not indicate who performed the buyer's duties during this time.

specialist; library assistant; library technician; cashier; and office manager. Their general duties include providing clerical support and assisting department managers in their day-to-day processing of department work. For example, an office assistant in the student accounting office assists department heads in data entry related to collection of tuition costs; a customer service representative in the admissions department performs data entry of student information and handles telephone calls relating to student admissions; and the administrative assistants in the various education departments set up appointments for department heads, draft letters, and assist department heads in data entry relating to their specific department.

The unit office clerical employees generally work 40 hours per week, 8:30 a.m. to 5:00 p.m. While they use the same computerized time-keeping system as the buyers and other nonbargaining unit employees, they are required to input their specific start and end times each work day while nonunit employees need only verify by computer each work day that they worked an eight-hour period. The unit employees receive different vacation, sick, and dental benefits than the nonunit employees. The unit employees earn an hourly wage rate<sup>10</sup>, are nonexempt employees for purposes of the Fair Labor Standards Act, and earn overtime, while the nonunit buyers are salaried and are exempt for purposes of the Fair Labor Standards Act. There are no educational degrees required for any of the unit clerical positions.

Prior to November 1, 2007, there were two a/p clerks, Uzma Syed and Faye Miles, in the accounts payable department<sup>11</sup> who were unit employees. These a/p clerks utilized the Employer's APEX computer system in processing payables. With the APEX system, the a/p clerk would check to see if there were sufficient funds to pay an invoice and if there were not sufficient funds, the clerk would carry the invoice over to the budget column where it would be suspended pending review by the budget department. About November 1, 2007, the Employer implemented the Banner computer system to replace the APEX system. The Banner system united the entire university under one automated system and markedly reduced the amount of paper work performed by the a/p clerks. Under the Banner system, the a/p clerk needed only to input the invoice number, date of the invoice, and the amount being paid, and the system would automatically either make payment on the invoice or suspend the invoice and send it to the budget department for further processing. As a result of the implementation of the Banner system, the amount of a/p processing work was reduced from 40 hours per week per clerk, to five hours or less per week per clerk. The Employer eliminated the full-time position of a/p clerk in November 2007.<sup>12</sup> The 10 hours of a/p processing work that was being performed by the

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<sup>10</sup> The current hourly wage rate varies among the office clerical employees from \$11.9280 to \$18.9649.

<sup>11</sup> The accounts payable department was merged into the purchasing department about 2005 and no longer exists.

<sup>12</sup> There is one part-time a/p clerk, Deborah Farmer, currently employed in the purchasing department. She reports directly to purchasing manager Maitlin, and is excluded from the unit as a part-time employee. The full extent of her duties is unclear.

a/p clerks was then assigned to the buyers along with their other job duties as noted below, and to the part-time a/p clerk.

## **Buyer Duties**

There are two buyers employed in the purchasing department: Edna Matthews and Keith Williams. Matthews possesses a bachelor of arts degree in business administration and marketing as well as previous employment experience as a purchasing manager. Williams possesses a bachelor of science degree in community development and public administration, as well as previous employment experience as senior buyer for a major Detroit health system.<sup>13</sup> Both Matthews and Williams possess certification by a purchasing society, referred to as APP certification, which is similar to the certification possessed by a certified public accountant.<sup>14</sup>

The buyers work exclusively under the supervision of the purchasing department, reporting directly to purchasing manager Maitland. They do not supervise any employees. They are salaried employees who work an average of 40 hours per week, 8:30 a.m. to 5:00 p.m., Monday through Friday, with an occasional Saturday, if necessary. Matthews' annual salary is \$39,400 and Williams' annual salary is \$35,121. The buyers verify by computer that they worked eight hours each work day but do not record their specific hours worked. The buyers are considered exempt employees for purposes of the Fair Labor Standards Act and do not receive overtime pay. The buyers receive the same benefits as the university's administrative staff.

Matthews and Williams perform the same job duties covering different schools, colleges, and departments within the university. They spend the majority of their time in contact with vendors and do very limited clerical work, besides spending about five hours each per week in a/p processing. The buyers determine prices for supplies, make price comparisons in order to purchase at the best available price, and place orders. In performing these functions, they interview sales persons; inspect samples; request, receive, and compare price quotations; determine source of supply; prepare purchase contracts, or assist in such preparation; and commit the credit of the university. The buyers sign correspondence on behalf of the university authorizing sale and delivery of goods, services, supplies, and equipment.

Requisitions for materials, supplies and services are transmitted to the buyers through the Banner system.<sup>15</sup> A requisition is entered in the Banner system from a

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<sup>13</sup> The former full-time a/p clerks each possessed degrees, although that was not a requirement for the position.

<sup>14</sup> APP certification is preferred. A bachelor's degree plus five years purchasing experience, or 10 years purchasing experience without a degree, is required.

<sup>15</sup> It appears that the Banner system may not be fully operational for all departments, in that there is some record evidence that the student accounting department is not yet on the Banner system. The record is silent with regard to what system it utilizes and how materials and supplies are ordered in the student accounting department.

department, school, college, office of the dean, vice president or president. The requisition is inputted by a unit employee, or another designee. The online requisition is then automatically transmitted to the dean and vice president for approval. In some instances, depending on the nature of the requisition or the moneys involved, the approval of the president of the university is required. If the dollar amount is excessive, as determined by the Banner system, the requisition automatically goes to the budget department to resolve where the money will come from before the requisition goes to the buyers. Once approved, the requisition is received online by the buyer for processing. The buyer determines if the requisition is a routine request, needs a specific price or should go to bid. If the requisition is routine, that is, it is for a contract item, or for a small monetary amount, or a standard item, the buyer will put the requisition into a purchase order. If the requisition requires bids or prices, the buyer independently investigates and solicits bids from vendors of such goods. While the buyer collaborates with the requesting department in selecting a vendor, he/she possesses authority to make the final determination regarding vendor selection. The buyer has the authority to negotiate prices, change delivery dates, and adjust disputes with suppliers over rejected items. The buyer makes the final determination concerning the source of supply and price of requested goods.

For example, Williams was responsible for contracting with a new vendor for a requisition for computer equipment, a vendor he had utilized with his previous employer, but which was new to the university. The value of the purchase contract exceeded \$50,000. Matthews reviewed the existing cell phone service, solicited bids from other providers, and determined that the Employer would continue utilizing the existing vendor, which provided the Employer with the best product, service and price.

The buyer also determines whether an emergency requisition is a true emergency. An emergency requisition arises when the party requests to “run out” to an office supply store or a hardware store to purchase supplies or materials. A buyer is in a unique position to know what supplies various departments have, and thus can fill these last minute requisitions through an in-house source.

Matthews is also responsible for administering the procurement card (P-card) system. P-cards are credit cards issued to various university staff for certain work-related expenses. Matthews issues P-cards to university staff, trains them regarding their use, and monitors their purchases on the P-cards. In this regard, Matthews independently determines whether the use of the P-card comports with Employer policy.

The buyers regularly attend and actively participate in about one or two meetings per month along with the controller, budget assistant controller and purchasing manager, as well as other management staff, and sometimes the vice president. These meetings address the general condition of the university, including ongoing projects, such as construction and renovation, and issues relating to the Banner system. None of the unit

employees attend these meetings, nor did the unit a/p clerks. The buyers, as well as the budget manager and special projects coordinator, train other university staff in use of the Banner system. Buyers are not involved in labor relations matters and do not have access to any labor relations related data or records. However, they are involved in developing and streamlining long-term procurement a/p strategies to improve a/p processes and practices.

### **Interaction between Buyers and Office Clerical Employees**

The unit employees work in various departments located throughout the McNichols Road campus. The buyers work exclusively in the purchasing department located on the third floor of the administration building along with the purchasing director, controller, vice president of finance, purchasing manager, and the budget managers. Some unit employees work in the same administration building, but none of them work on the third floor. The part-time a/p clerk, Deborah Farmer, also works on the third floor of the administration building. At least since 2003, no unit employees have transferred to the buyer position and it appears that no buyers have ever transferred to a unit position.

The only interaction between the buyers and unit employees is limited to the unit employees' involvement in transmitting online requisitions for materials on behalf of their department heads. In this regard, the buyer will receive the requisition generated by the unit employee online and may ask the unit employee to check with the department head regarding the specific details of the requisition.

### **Analysis**

#### **Jurisdiction**

The Employer stipulated that during the past calendar year, its gross annual revenue exceeded \$1,000,000, of which more than \$50,000 was received directly from outside the state of Michigan. Thus, it satisfies the Board's jurisdictional standards for private nonprofit colleges and universities. The Employer urges, however, that the Board does not have jurisdiction over it because it is a religious institution, relying on *NLRB v. University of Great Falls*, 278 F.3d 1335 (D.C. Cir. 2002). Extant Board law provides otherwise, and by that I am bound. The Employer's reliance on *University of Great Falls* is misplaced. See *Carroll College, Inc.*, 345 NLRB 254, fn 8 (2005).<sup>16</sup>

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<sup>16</sup> The Employer has not affirmatively raised a Religious Freedom Restoration Act (RFRA), 42 U.S.C. §2000bb-1, claim in this proceeding, and inasmuch as it is the Employer's burden to establish that the Board's assertion of jurisdiction is a violation of the RFRA, I do not address the issue.



The Employer is sponsored by two religious orders, and one third of its board of trustees is required to be affiliated with either the Jesuits or Sisters of Mercy. Neither order, or the Catholic church, is involved in its day-to-day operations. It accepts federal funds and is not financially dependent on the Catholic church or either of its religious sponsors. Its mission statement identifies itself as a “Catholic university in the Jesuit and Mercy traditions,” and “seeks to integrate the intellectual, spiritual and ethical and social development of [its] students.” The Employer does not hire on the basis of religious belief, promote or evaluate its staff, or require its instructors or any other of its staff to adhere to the teachings of the Catholic church or participate in any of its Catholic spiritual observances or traditions. The assertion of jurisdiction does not pose a significant risk of infringement on the Employer’s First Amendment rights, as envisioned in *NLRB v. Catholic Bishop of Chicago* 490 U.S. 490 (1979); *Livingstone College*, 286 NLRB 1308 (1987).

Moreover, neither the unit involved herein, nor the buyer position the Petitioner is seeking to accrete into the unit by the instant petition, participates in the educational mission of the university. The sensitive issues raised by the Board’s assertion of jurisdiction over religiously affiliated educational institutions are not present in this case. *The Salvation Army*, 345 NLRB 550 (2005); *Livingstone College*, supra. As noted above, the unit employees and the buyers at issue are not teachers, and they are not engaged in work which promotes tenets of the Catholic church. Asserting jurisdiction does not implicate the entanglement of Church and State prohibited by the First Amendment and denounced in *NLRB v. Catholic Bishop*, 440 U.S. 490 (1979). Accordingly, I find it appropriate to assert jurisdiction herein.

### **Timing of the Petition**

The Employer contends that the petition is untimely because the buyer positions occupied by Matthews and Williams have been in existence for about nine years and have not undergone any recent, substantial changes. Currently, the parties are mid-term of a collective bargaining agreement that became effective on January 6, 2006 and expires on December 31, 2008.

It is well settled that a petition seeking to include a classification historically excluded from a unit raises a question concerning representation and that, accordingly, a petition for clarification is inappropriate. *Robert Wood Johnson University Hospital*, 328 NLRB 912, 914 (1999); *Boston Cutting Die Co.*, 258 NLRB 771, 772 (1981); *Union Electric Co.*, 217 NLRB 666, 667 (1975). Where a position or classification has historically been excluded from the unit, and there have not been recent, substantial changes that would call into question the placement of employees in the unit, the Board generally will not entertain a petition to clarify the status of that position, regardless of when in the bargaining cycle the petition is filed. *Bethlehem Steel Corp.*, 329 NLRB 243, 244 (1999); *The Washington Post Co.*, 256 NLRB 1243, 1245 (1981). The Board

has held that a unit clarification petition filed during the term of a contract dealing with disputed classifications will be dismissed if the party filing the petition did not reserve its right during the course of bargaining to file for clarification. *Edison Sault Electric Co.*, 313 NLRB 753 (1994). Further, the Board, generally, will not clarify a unit defined by contract during the contract's midterm to include an excluded position in existence before the contract was signed because to do so would disrupt the bargaining relationship. *Austin Cablevision*, 279 NLRB 535, 536 (1986).

The bargaining history here militates against adding the buyer position to the existing unit of office clerical employees. There is no bargaining history with respect to the buyer position. The disputed buyer classification has been in existence for about nine years, since 1999, has been populated through the negotiation and ratification of multiple successive collective bargaining agreements, and has never been included in the office clerical bargaining unit. The Petitioner has never claimed, either via the grievance procedure or during the course of the collective bargaining of multiple contracts, that the buyer position should be included in the existing office clerical unit.

Further, there has been no significant change in the duties of buyers since the position was first occupied in 1999, and there has also been no change in the essential functions of the office clerical employees in the bargaining unit. In this regard, the record demonstrates that the employees working in the buyer positions since 1999 have performed substantially the same duties since 1999 and have always been excluded from the bargaining unit. When the Banner system was implemented in 2007, the buyers began performing some of their job duties in a different manner given the automated nature of the Banner system. However, their basic job duties did not change. A minor change that took place at this time was the addition of five hours per week per buyer in processing payables as a result of the elimination of the a/p clerk unit positions.

Under these circumstances, inasmuch as the position of buyer predated a number of collective bargaining agreements and has remained largely unchanged, the instant petition for their inclusion raises a question concerning representation not cognizable in unit clarification proceedings, and must be dismissed. *Compton Hill Medical Center*, 251 NLRB 1547, 1549 (1980); *James A. McBrady, Inc.*, 247 NLRB 42 (1980).

### **Managerial Status of Buyers**

Matthews and Williams possess authority to meet with vendors to determine which vendor will provide the best price for a requisitioned item, and they have the discretion to change vendors based on price, quality, and delivery schedule. Their purchasing decisions and the discretion they exercise in performing their purchasing duties is not ordinarily reviewed by any other university official. Additionally, they regularly participate in meetings with the controller, budget assistant controller, purchasing manager and other members of management. The manner in which Matthews

and Williams exercise their purchasing authority, i.e., the extent of unreviewed discretion that they exercise and the magnitude of its impact on the Employer's overall operation of the university, establishes that they are more than simply buyers performing routine duties. *Concepts & Designs, Inc.*, 318 NLRB 948, 956-957 (1995).

In conducting their purchasing activities, the buyers regularly commit the Employer's credit. Matthews reviewed the Employer's mobile telephone service provider, and determined to retain the vendor. She also administers the Employer's P-card system, and monitors the expenses charged. Williams pledged in excess of \$50,000 for computer equipment. The dollar amounts of these commitments, in total, are not insignificant. Ability to commit an employer's credit in amounts which are substantial, especially where done through the exercise of discretion which is not ordinarily reviewed, is strong evidence of managerial status. *Concepts & Designs, Inc.*, supra at 957; *Swift & Co.*, 115 NLRB 752, 753 (1956); *American Locomotive Co.*, 92 NLRB 115, 116-117 (1950).

Thus, a substantial portion of the buyers' duties require them to exercise unreviewed discretion in performing duties which involve substantial amounts of the Employer's credit. In carrying out those duties they "represent management interests by taking...discretionary actions that effectively...implement employer policy." *Concepts & Designs, Inc.*, supra at 957, citing *NLRB v. Yeshiva University*, 444 U.S. 672, fn. 16 (1980). I conclude that Matthews and Williams are managerial employees and outside the protection of the Act. See, *G.K. Chevrolet, Inc.*, 176 NLRB 416, 421 (1969); *Western Gear Corporation*, 160 NLRB 272, 275-276 (1966); *Mack Trucks, Inc.*, 116 NLRB 1576, 1577-1578 (1956); *Federal Telecommunications Laboratories, Inc.*, 92 NLRB 1395, 1399 (1951).

### **Community of Interest between Unit Employees and Buyers**

The Employer would exclude the buyers from the existing unit urging that if they are not managers in the purchasing department, in any event, they have interests substantially different from those of the various clerical employees who principally comprise the office clerical unit.

The Board follows a restrictive policy in determining accretions to existing units as employees accreted to the unit are not accorded a self-determination election. *Towne Ford Sales*, 270 NLRB 311, 311-312 (1984), enf'd. 758 F.2d 1477 (9<sup>th</sup> Cir. 1985); see also *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001). Thus, the Board will find accretion only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the pre-existing unit to which accretion is sought. *E.I. DuPont de Nemours, Inc.*, 341 NLRB 607, 608 (2004); *Compact Video Services, Inc.*, 284 NLRB 117, 119 (1987). The relevant factors include interchange and contact among employees, degree of

functional integration, geographic proximity, similarity of working conditions, similarity of employee skills and functions, supervision, and collective-bargaining history. *E.I. DuPont de Nemours, Inc.*, supra at 608; *Archer Daniels Midland Co.*, supra at 675. The community of interest required for a job classification to be accreted to an existing unit is far greater than in an initial unit determination. An initial unit determination requires a community of interest among employees sufficient to establish an appropriate unit, not necessarily the most appropriate unit. In contrast, accretion demands that the new classification have no identity separate and distinct from those in the existing bargaining unit. Put more simply, the issue here is not whether the disputed classification may be included with the other unit positions, but whether it must.

The two most important factors determining unit placement are employee interchange and common day-to-day supervision. *E.I. DuPont de Nemours, Inc.*, supra at 608; *Archer Daniels Midland Co.*, supra at 675. Where there is no actual interchange of employees, and particularly where there is no common day-to-day supervision, the daily concerns and problems among employees at one location may not necessarily be shared by employees located elsewhere. *Towne Ford Sales*, supra at 311-312; *Renzetti's Market, Inc.*, 238 NLRB 174, 175 (1978).

In the instant case, there is no common day-to-day supervision over the buyers and any of the unit employees. Although there may be some similarity of working conditions between the buyers and unit employees in that they work similar hours and within the same facility at the McNichols Road campus, there are significant differences that outweigh these similarities. No unit employees work on the same floor of the administration building in which the buyers work. The unit employees receive hourly wages and benefits as outlined in their contract, while the buyers are salaried employees who enjoy the same benefits as the university's administrative employees. Although the buyers may have some geographic proximity to a few unit employees working in the administration building on different floors, they have little daily interaction and no interchange of duties whatsoever with those unit employees or any others.

The duties of the buyers and unit employees are distinctly dissimilar. There is no evidence that the work being done by the buyers was ever performed by any unit employees, except for some minimal accounts payable entries. The unit clerical employees provide clerical support to their respective department heads in the day-to-day administration of the departments. None of their positions require any post-high school education or experience. In contrast, while the buyers perform some limited administrative duties, the majority of their time is spent in contact with suppliers and vendors to purchase services, materials, and equipment for the Employer, and resolve payment disputes over previously invoiced amounts. These responsibilities involve regular customer contact and require the exercise of discretion, which distinguishes the

buyers from the unit employees, including the a/p clerks who were previously included in the unit. See, *ITT Grinnell*, 253 NLRB 584, 585-586 (1980). Additionally, the buyer position requires either a college degree and 5 years previous purchasing experience, or 10 years purchasing experience without a degree. There are no such qualifications for the office clericals. Although there is some minimal functional integration between the two classifications, e.g., the unit clerical employees may transmit requisitions for materials on behalf of their departments to the buyers for processing, the extent is insignificant to the overall duties of the buyers. There is no collective bargaining history as to the buyers as no party has ever sought to include the buyer position in the existing unit.

Thus, the two most important factors in the community of interest analysis used to determine whether a classification should be accreted to an existing unit, employee interchange and common day-to-day supervision, are absent. Accordingly, the buyers, Edna Matthews and Keith Williams, lack an overwhelming community of interest with the bargaining unit and, as such, they should be excluded from the unit. *E.I. DuPont de Nemours, Inc.*, supra at 608-609; *Southern Alkali Corporation*, 84 NLRB 120, 123 (1949).

## **Conclusion**

Based upon the foregoing and the record as a whole, I conclude:

- (1) that the Employer is subject to the jurisdiction of the Act.
- (2) that the parties' bargaining history established that the petition was untimely filed.
- (3) that, even if the petition was timely filed, the buyers are managerial employees and not subject to coverage under the Act.
- (4) that, even if the petition was timely filed and the buyers are not managerial employees, the buyers do not share an overwhelming community of interest with the existing bargaining unit to warrant their inclusion in it.

Accordingly,

**IT IS ORDERED** that the Petitioner's request to clarify the office clerical unit to include full-time buyers was untimely filed, and the petition is dismissed, and in any

event, the existing collective bargaining unit may not be clarified to include the position of full-time buyer.<sup>17</sup>

Dated at Detroit, Michigan, this 31<sup>st</sup> day of July 2008.

(SEAL)

*/s/ Stephen M. Glasser*

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Stephen M. Glasser, Regional Director  
National Labor Relations Board, Region 7  
Patrick V. McNamara Federal Building  
477 Michigan Avenue, Room 300  
Detroit, Michigan 48226

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<sup>17</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14<sup>th</sup> Street N.S., Washington D.C. 20570**. This request must be received by the Board in Washington by **August 14, 2008**. The request may be filed electronically through **E-Gov** on the Board's website, [www.nlrb.gov](http://www.nlrb.gov), but may **not** be filed by facsimile.

To file the request for review electronically, go to [www.nlrb.gov](http://www.nlrb.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. Then complete the E-Filing form, attach the document containing the request for review, and click the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's web site, [www.nlrb.gov](http://www.nlrb.gov).